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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 613

MAURICE C. SPARLING, SUPERINTENDENT OF BANKS OF THE STATE OF CALIFORNIA, AS LIQUIDATOR OF THE BUSINESS AND PROPERTY OF THE YOKOHAMA SPECIE BANK, LTD., SAN FRANCISCO, WITH A BRANCH IN LOS ANGELES, IN LIQUIDATION,

Petitioner,

vs.

PARAMOUNT PICTURES, INC., BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION (A NATIONAL BANKING ASSOCIATION), LOEW'S INCORPORATED (A DELAWARE CORPORATION), AND UNIVERSAL PICTURES COMPANY, INC., (A DELAWARE CORPORATION).

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

S. M. SAROYAN,
DUDLEY T. SHEARER,
SHIRLEY, SAROYAN, SHEARER & SULLIVAN,
Counsel for petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The petitioner, Maurice C. Sparling, Superintendent of Banks of the State of California, as Liquidator of the Busi-

ness and Property of The Yokohama Specie Bank, Ltd., San Francisco, with a branch in Los Angeles, in Liquidation, by his counsel, prays that a writ of certiorari issue to review the order of the Supreme Court of the State of California, entered in the above cause on November 21, 1949, denying petitioner's application for a hearing in said court from the decision of the District Court of Appeal of the State of California, First Appellate District, Division Two, affirming the judgments of the Superior Court of the State of California in and for the City and County of San Francisco.

Opinions Below

The order of the Supreme Court of the State of California, (R. 554) reads as follows:

> "Appellants' (Clark and Sparling) petition for hearing denied."

The decision and opinion of the District Court of Appeal of the State of California was rendered and filed on September 29, 1949, and is reported in 93 A. C. A. 917, 209 Pac. (2d) 970.

The Findings of Fact and Conclusions of Law, and Judgments of the Superior Court of the State of California in and for the City and County of San Francisco are set forth in the transcript of record herein (R. 23-33; 59-67; 96-105; 133-143). These judgments were rendered and entered April 19, 1948.

Jurisdiction

The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, section 1257 (3). The order of the Supreme Court of the State of California, denying a hearing after the decision of said District Court of Appeal sought to be reviewed, was entered November 21, 1949.

Statute and Subject Matter Involved

This case involves the application and interpretation of Section 5(b)(2) of the Trading with the Enemy Act, the so-called exculpatory provisions of said Act, 50 U. S. C. App. Section 5(b)(2), and more particularly, the meaning and application of the words "good faith" in said section, which reads as follows:

> "Any . . . delivery of property or interest . . . to the United States . . . pursuant to . . . any rule issued hereunder shall to the extent thereof be full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this sub-division, or any rule, regulation, instruction, or direction issued hereunder."

The specific dispute in this case relates to the liability of The Yokohama Specie Bank, Ltd., San Francisco Office (now being liquidated by the Superintendent of Banks of the State of California), for damages at the legal rate of 7% per annum, for failure to pay its deposits when due. This failure resulted from the termination, on December 7, 1941, of the bank's license to do business, by an order issued by the President of the United States under Section 5(b) of the Trading with the Enemy Act.

Statement and Question Involved

On December 7, 1941, General License No. 69, the federal license under which The Yokohama Specie Bank, Ltd., San Francisco Office, was allowed to do business, was revoked. Treasury Department officials immediately occupied the premises of the bank, making certain that no attempt was made to reopen the bank for business. At the same time deputies from the State Banking Department, representing

the Superintendent of Banks of the State of California, also occupied the premises of the bank, asserting a right of seizure of the business, assets and affairs of the bank pursuant to the Bank Act of the State of California.

On or about December 8, 1941, all four officers of the bank were placed in detention camps as alien enemies, and were at all times detained in the physical custody of the United States government until their repatriation to Japan in June, 1942.

Neither said officers of the bank, nor any depositor, made application to the Treasury Department for authority or a license to reopen the bank or to pay its depositors. On December 18, 1941, the Superintendent of Banks of the State of California applied for a license to conserve and liquidate the bank and received such license on December 27, 1941. The bank is still being liquidated by the Superintendent of Banks. On or about September 2, 1948, an 80% dividend was declared and paid to depositors and creditors.

The question presented is whether the bank can be charged with liability for the failure of the officers of the San Francisco Office of The Yokohama Specie Bank, Ltd., to apply for a Treasury Department license to reopen said San Francisco office of the bank. Do the exculpation provisions of Section 5(b)(2) of the Trading with the Enemy Act render the bank immune from liability?

Specification of Error

The trial court, the District Court of Appeal of the State of California in affirming the decision of the trial court, and the Supreme Court of the State of California, in denying an application for hearing in that court, committed error in holding that under the undisputed facts heretofore outlined, the failure of the bank's officers to apply for Treasury Department licenses constituted a lack of good faith, and that the bank therefore could not rely on the exculpatory

provisions of Section 5(b)(2) of the Trading with the Enemy Act.

Reasons Relied On for the Allowance of the Writ

The California courts have, in this case, decided a federal question of considerable substance not heretofore determined by this court. The California courts have, in this case, emasculated the protection and immunity from liability afforded by the exculpatory provisions of the Trading with the Enemy Act.

The amount of interest (damages) involved in the present case may amount to approximately one and a half million dollars. The decision herein further will serve as a guide to the Superintendent of Banks of the State of California in the liquidation of other Japanese banks in California. The few decisions specifically considering Section 5(b)(2) of the Act are inconclusive. The proper interpretation of this Act, and particularly the exculpatory provisions thereof, is extremely important. It is a matter that should finally be decided by this court. The facts in the present case are undisputed, the record is complete.

The decision of the California courts in this case on the question of "good faith" is at variance with the universally accepted standard of good faith as applied in other fields of law, both by federal and state courts.

The Superintendent of Banks of the State of California, as Liquidator of The Yokohama Specie Bank, Ltd., San Francisco Office, respectfully submits that this petition for writ of certiorari should be granted.

Dated, San Francisco, California, February 13, 1950.

S. M. Saroyan,
Dudley T. Shearer &
Shirley, Saroyan, Shearer & Sullivan,
Counsel for Petitioner.

Certificate of Counsel

The foregoing petition for writ of certiorari, together with the supporting brief herein, is in the opinion of the undersigned well founded in point of fact and law, is presented in good faith and is not interposed for delay.

Dated, San Francisco, California, February 13, 1950.

S. M. Saroyan and
Dudley T. Shearer,
Of Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 613

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PARAMOUNT PICTURES, INC., BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION (A NATIONAL BANKING ASSOCIATION), LOEW'S INCORPORATED (A DELAWARE CORPORATION), AND UNIVERSAL PICTURES COMPANY, INC. (A DELAWARE CORPORATION), *Respondents*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Jurisdiction

The judgment of the District Court of Appeal, 1st Appellate District, State of California, Division 2 thereof, which is sought to be reviewed herein, was entered September 29, 1949, and affirmed the judgment of the Superior Court

of the State of California, in and for the City and County of San Francisco, which was entered April 19, 1948.

A petition for a hearing in the Supreme Court of the State of California was denied by that court on November 21, 1949.

The jurisdiction of this Honorable Court is invoked under Title 28, United States Code, Section 1257(3).

The decision and opinion of the District Court of Appeal of the State of California reported in 93 A.C.A. 917, 209 Pac. (2d) 970, is set forth in the Transcript of Record herein, pages 515 to 524.

Statement of Facts

The plaintiffs and respondents are depositors in the San Francisco Office of The Yokohama Specie Bank, Ltd. Said bank was a banking corporation, organized under the laws of Japan and doing business in the State of California pursuant to Section 7 of the Bank Act of said state.

On July 26, 1941, by virtue of the extension of Executive Order No. 8389 as amended (Exhibit 35), to Japan, it became necessary for this bank to obtain a license from the United States Government in order to continue to operate. This license was granted by means of General License No. 69 (Exhibit 38), issued by the Treasury Department of the United States. Under this General License the bank continued to operate as any domestic bank, subject to the same licensing requirements in effect with respect to domestic banks insofar as specific transactions involving Japanese nationals were concerned.

On December 7, 1941, as the result of the outbreak of war, General License No. 69 was revoked by the Treasury Department by issuance of Public Circular 8 (Exhibit 40). This Public Circular No. 8 provided as follows:

> "All general licenses, specific licenses, and authorizations of whatsoever character are hereby revoked inso-

far as they authorize, directly or indirectly, any transaction by, on behalf of, or for the benefit of, Japan, or any national thereof."

Before the opening of business on December 8, 1941, the representatives of the Treasury Department of the United States, and also the representatives of the Superintendent of Banks of the State of California were on the premises of the bank, in order to prevent the opening of said bank for business. On said date, the Superintendent of Banks of the State of California took possession of the property and affairs of said bank, by virtue of the Bank Act of the State of California.

Immediately following the outbreak of the war each of the four officers of The Yokohama Specie Bank, Ltd., San Francisco, was placed in a detention camp. Three of said officers (Takase, Daigo, and Uno) were subsequently, on or about December 17, 1941, transferred to a detention camp at Ft. Missoula, Montana, where they remained until March or April, 1942, while the fourth (Motoyoshi) was removed to a detention camp near San Francisco where he remained until June, 1942. (Findings of Fact, No. 12, R. 27). Each of the bank's officers was at all times detained by and in the custody of the United States Government until repatriated to Japan. It is conceded that during the period of their detention in the United States, said officers could have filled out and mailed an application to the Treasury Department, or to the Secretary of the Treasury himself, requesting permission or authorization to reopen the bank and pay the depositors.

On December 18, 1941, the Superintendent of Banks of the State of California made application for a license to conserve and liquidate the business, assets and affairs of The Yokohama Specie Bank, Ltd., San Francisco, in accordance with the Bank Act of the State of California

(Exhibits B and C), and licenses were granted on December 27, 1941 (Exhibits 7, 8 and 9).

Plaintiff depositors filed their respective claims in the liquidation proceedings, not only for the principal amount of their deposits, but for interest on said deposits at the legal rate of 7% from the date of the closing of the bank. The claims were rejected as to that portion pertaining to interest, and the claimants filed these suits for declaratory relief.

None of the bank's four officers ever filed an application for a license or authorization to reopen the bank or pay the depositors, nor did any of the depositors ever apply for a license from the Treasury Department authorizing payment of deposits.

The trial court granted a declaratory judgment declaring the depositors to be entitled to the full 7% interest specified by the Constitution and Statutes of the State of California as damages for the withholding of payment of money when due, said interest to run from the date each deposit fell due. This declaratory judgment has been sustained by the District Court of Appeal of the State of California and a further hearing has been denied by the Supreme Court of said state.

Question Presented and Specification of Errors to Be Urged

The trial court herein, in its conclusions of law (R. 31), concluded that as a matter of law each of the four officers of the bank, following the outbreak of war, "had an obligation to plaintiffs to obtain a license authorizing The Yokohama Specie Bank, Ltd., San Francisco, with a branch in Los Angeles, to continue business after December 8, 1941, or a license authorizing payment to plaintiff of its deposits after said date," and that "the failure of said officers, and each of them, to discharge said obliga-

tion showed an absence of 'good faith' of Section 5(b)(2) of the Trading with the Enemy Act, as amended."

Section 5(b)(2) of the Trading with the Enemy Act reads as follows:

> "Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder."

The question immediately presents itself: Do the undisputed facts support a finding of an absence of good faith on the part of the officers? Did the court commit error in determining, as a matter of law, that the officers had an absolute legal duty to apply for licenses, and failure to do so constituted an absence of good faith?

The Superintendent of Banks of the State of California, both in the trial court and in his briefs before the District Court of Appeal, and also in his petition for a hearing by the Supreme Court of the State of California, has consistently maintained that the officers of the bank, interned as they were as alien enemies, and with the bank's license to do business revoked by the United States Government, and possession of the bank seized by the Superintendent of Banks of the State of California, could not reasonably be expected to take steps to secure a license to reopen the bank and pay depositors. It is submitted that the failure of the bank's officers to apply for such a license cannot be held to constitute bad faith.

Argument

The principal authority relied upon by the depositors, and regarded by the District Court of Appeal of the State of California as decisive of this case, is *Fujikawa* v. *Sunrise Soda Works,* 158 F. (2d) 490 (C. C. A. 9), cert. den. 331 U. S. 832. That case involved a Japanese bank in Hawaii, whose license to operate was, as here, revoked by the outbreak of war. The depositors sued for interest and were successful. In that case, however, no showing was made that any of the bank's officers was detained or held in physical custody by the government. The court there concluded that the failure of the officers to seek licenses to reopen the bank constituted an absence of good faith. The Alien Property Custodian did not participate in the trial of that action, was not a party at the trial level, and not being satisfied with the record did not join in the petition for certiorari.

The *Fujikawa* case has been interpreted as laying down the rule that in order to show good faith under the exculpatory provisions of Section 5(b)(2) of the Trading with the Enemy Act one must show either (1) that application for a license was made and denied, or (2) circumstances were such as to make the issuance of a license impossible. *Meijer* v. *General Cigar Co.,* 81 NYS (2d) 488 involved a suit by a citizen and resident of Holland against a domestic corporation, alleging breach of an oral contract of employment during the years 1941 to 1947. Citing the *Fujikawa* case the court stated at p. 490:

> "There remains for determination the effect of this change in status upon the contractual relationship existing between the parties. Under Section 3(a) of the statute it was not unlawful for the defendant to continue performance under its contract with the plaintiff provided it did so pursuant to a license

> from the President. Theoretically, therefore, assuming the issuance of the prescribed license, it could have been possible for the parties to have continued to discharge the obligations imposed upon them by the contract. Nothing has been submitted, however, to indicate that application for a presidential license was made and denied, or that governmental action during the period in question was such as to make its issuance impossible. In the absence of such a showing, the Trading with the Enemy Act alone may not be availed of as a defense. *Kiyoichi Fujikawa* v. *Sunrise Soda Water Works Co.*, 9 Cir., 158 F. 2d 490; *Joring* v. *Harriss*, 2 Cir. 292 F. 974; *Dezsofi* v. *Jacoby*, 178 Misc. 851, 36 N.Y.S. 2d 672; *Brown* v. *J. P. Morgan & Co.*, 177 Misc. 626, 31 N.Y.S. 2d 323."

Such a definition of "good faith" disregards the question of the state of mind of the officers of the bank. It also ignores the question of whether or not the officers acted honestly and in good conscience in omitting to file applications for a license. It would seem, therefore, appropriate to re-examine the question of exactly what is meant by the well known and widely used legal term "good faith".

Respondent depositors rely on certain language in *Bliss Petroleum Co.* v. *McNally*, 254 Mich. 569, 237 N W. 53, at p. 55, wherein the court used the following language:

> "Directors owe the corporation good faith and honest service. Good faith includes not only personal upright mental attitude and clear conscience, but also the intention to observe legal duties."

That case involved the purchase of certain oil leases by the directors, individually, and a subsequent sale of the same by the directors to the corporation, at a profit. The trial court directed a verdict for defendants, but this was reversed on appeal. Immediately following the statement

of the court above quoted the court went on to state (237 N W. 53 at 55):

> "Honest service includes elimination of private gains in corporate transactions conducted by directors and not approved by other authorized disinterested officers, with full knowledge of the facts. If directors undertake to acquire property for the corporation, they act in a trust capacity in acquiring it. Express direction by the corporation to them to purchase is not a requisite of liability in this respect. Nor does the fact that they have a right to deal personally in leases modify their duties as directors when their transactions touch upon the corporation itself. Their obligations and liabilities arise out of their trust duties in dealing fairly with the corporation."

Thus the ultimate test applied in the *Bliss Petroleum* case was that of fair and honest dealing. To state that good faith also includes the intention to observe legal duties, as applied to the present case of the officers of The Yokohama Specie Bank, Ltd., San Francisco, begs the question, involves somewhat of a circuity of reasoning. To determine whether the officers had an absolute legal duty to file applications for a license in order to come within the exculpatory clauses of the Trading with the Enemy Act, the court must first determine whether the omission to file such applications was in good faith in reliance on a governmental order.

Good faith has been variously defined as "the exercise of reasonable care, prudence, and diligence," "that state of mind denoting honesty of purpose," "honest belief," "honesty of intention," "*the exercise of a reasonable discretion in the circumstances.*" 35 Corp. Jr. Sec. 488.

Generally there are two approaches to the problem of good faith, namely, the *subjective* approach—the actual state of mind irrespective of its producing causes;—and the *objective* approach—the exercise of that discretion which a

reasonably prudent person would exercise under the circumstances. These two views are set forth in *Siano* v. *Helvering,* 13 Fed. Supp. 776, where the court adopted the objective view. The plaintiff in that case was a manufacturer of products containing industrial alcohol. His permit to manufacture these products was withdrawn by reason of his failure to pay taxes on certain sales of these products, pursuant to a regulation authorizing withdrawal of a permit unless there existed a good faith compliance with the regulations. Plaintiff stated he had no knowledge of the regulation involved, therefore he was acting in good faith. In rejecting the subjective test, as applied to the facts in that case, the court stated (13 Fed. Supp. at 780, quoting from *Pinkerton Bros.* v. *Bromley,* 77 N. W. 307):

> "To constitute good faith, there must be not only absence, not alone of participation in fraud or collusion with the vendee, but also of knowledge, or even notice of the fraud, or of facts and circumstances calculated to put an ordinary business man on inquiry, so he could ascertain the truth."

An examination of the cases reveals that the particular type of case involved determines which test of good faith, the subjective or the objective, is to be applied. In *Whitlock* v. *Alexander,* 76 N. E. 538, the court stated the test, as applied to corporate officers, to be as follows:

> ". . . good faith requires the exercise by the corporate officers of good sense and reasonable business prudence."

The court, in *Phillips* v. *Whittom,* 192 SW (2d) 856, stated the objective test of good faith in this manner:

> ". . . good faith, however generally imposes a duty on the obligor to use reasonable diligence, the diligence that an honest man of ordinary prudence is accustomed to exercise."

It would seem elementary that, as stated by the court in *Witters Associates Inc.* v. *Ebsary Gypsum Co.*, 93 Fed. (2d) 746, in discussing the meaning of the words "good faith" as used in a federal statute,

> ". . . what is meant by the term must be drawn from the meaning of the words themselves, as interpreted by the context in which they are used, the purpose back of the statute, the mischiefs it was enacted to prevent, the results it was enacted to accomplish."

That case involved the filing of a petition for reorganization under Section 77B(a) of the Bankruptcy Act, the court holding that the filing of a petition "in good faith" meant a filing with a reasonable belief that the debtor is in a position to conform to the requirements of the statute.

The primary purpose of the exculpatory provisions of the Trading with the Enemy Act is to obtain immediate compliance with the Freezing Order and any other orders issued pursuant to Section 5(b) of the Act. To encourage such compliance Section 5(b) (2) creates an immunity from possible liability for any person who complies with such an order, so long as whatever is done or omitted to be done is "done or omitted in good faith" pursuant to and in reliance on such order. This exculpation applies irrespective of the validity or legality of the particular order involved. For example, *Alexewicz* v. *General Aniline & Film Corporation*, 181 Misc. 181, 43 NYS (2d) 713, involved an action by a naturalized citizen of German descent for breach of a written contract of employment. Defendant, a Delaware corporation, had discharged plaintiff upon order of the Treasury Department which asserted that plaintiff might be hostile to the war efforts of United States. The court cited Section 5(b)(2) of the Trading with the Enemy Act, and remarked that the validity of the order was not material, stating, at page 726:

> "Indeed, even if the Secretary of the Treasury lacked the authority to nullify the contract in question, the defendant would still be absolved from liability in the absence of a showing of a lack of good faith."

In the present case the license of The Yokohama Specie Bank, Ltd., San Francisco, to do business was terminated by an order issued pursuant to the Trading with the Enemy Act. The bank's officers, as a result, made no attempt to reopen the bank on December 8, 1941, or thereafter. Within a few days after the outbreak of war, these officers were taken into custody by the United States government, where they remained at all times until their repatriation to Japan. From the subjective point of view there can be no doubt that the officers "honestly" and "in good conscience" relied on the order of the federal government which closed the bank.

The real problem is whether, under the admitted facts of this case, the officers exercised that degree of discretion to be expected of reasonably prudent persons under similar conditions. To lay down an absolute rule that good faith required the filing of applications for licenses is to set a standard of conduct far above that by which these officers should be tested.

Immediately following the outbreak of war we find the officers of the bank faced with the following factual situation:

(1) The bank's license to engage in business had been revoked by the federal government, and Treasury Department representatives were on hand at the premises of the bank to make certain that the bank did not open its doors to transact business.

(2) The Superintendent of Banks of the State of California did on December 8, 1941, take possession of the busi-

ness and affairs of the bank pursuant to sections 135c and 136 of the Bank Act of the State of California. On December 27, 1941, the Superintendent of Banks received a license to conserve and liquidate the affairs of the bank.

(3) Each of the officers was himself in the physical custody of the United States government, and could not have operated the bank, even with a license.

(4) Within a few months all persons of Japanese descent (including the great majority of the depositors) were removed from California and the West Coast.

Under such circumstances how can it be said that the officers' failure to seek licenses constituted bad faith? Confronted with the circumstances outlined above, can it fairly be argued that the officers acted unreasonably in not making applications for a license or that such omission shows a lack of good faith as a matter of law. If it must be shown that the granting of such an application was actually an impossibility, then an impossible burden has been placed on the defendants and intervenor. No matter how positive or fixed might be the Treasury Department's decision not to allow any Japanese bank to reopen, it can always be argued that such a decision might be changed and thus the granting of a license, no matter how unlikely, was not an absolute impossibility.

It is submitted that the real test should be phrased as follows:

Under the circumstances, was the likelihood of the federal government's granting a license to reopen the bank, and the Superintendent of Bank's relinquishing possession, pursuant to the provisions contained in Section 136 of the Bank Act, and the officers being released to go into San Francisco to operate the bank, so infinitesimal that a reason-

ably prudent bank officer could not have been expected to make application for a license to reopen the bank?

In considering the question of whether the officers can be charged with bad faith, it must be remembered that the reopening of the bank by the officers thereof would have necessitated a combination of at least three factors, viz.:

(a) The granting of a license by the Treasury Department,

(b) The approval of the Superintendent of Banks of the State of California, by the relinquishment of possession by him, either voluntarily or by court order, and

(c) The approval of the immigration and military authorities, authorizing the physical release of the officers for the purpose of operating the bank.

It would have been futile to clear any one of the forementioned hurdles unless the other two also were negotiated successfully.

The trial court and the appellate courts of the State of California erroneously have adopted the rule of *Fujikawa* v. *Sunrise Soda Water Works,* (Supra) in the interpretation of Section 5(b)(2) of the Trading with the Enemy Act. A standard of good faith has been imposed which is neither authorized nor intended by Congress in enacting the exculpatory provisions in question. The bank officers certainly cannot be charged with having acted unreasonably or in bad faith in view of the circumstances with which they were confronted.

Conclusion

Respondents have received judgments declaring that as depositors they are entitled to damages or interest at the legal rate (Article XX, Section 22, of the Constitution of

the State of California; Civil Code of the State of California, Section 3302) of seven per cent (7%) per annum from the date their deposits fell due to the date of payment of principal, to the extent that funds are available for that purpose. These judgments (the various actions by respondents were consolidated for trial) declare that petitioner, as liquidator of The Yokohama Specie Bank, Ltd., is not entitled to the immunity from liability afforded by Section 5(b)(2) of the Trading with the Enemy Act; that the bank's officers were guilty of a lack of good faith in failing to apply for licenses to reopen the bank and pay depositors, following the outbreak of war.

It is submitted that the undisputed facts set forth in the findings of fact of the trial court establish beyond any reasonable doubt that the officers of the bank acted in good faith. It is respectfully submitted that this petition for Writ of Certiorari should be granted and the matter determined by this court.

Dated, San Francisco, California,
February 13, 1950.

S. M. Saroyan, Dudley T. Shearer and
Shirley, Saroyan, Shearer & Sullivan,

Counsel for Petitioner.